

S 22 1992

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CLOSED
8-13-92
CV: JS6
UPW

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

ATLAS CORPORATION and
VINNELL MINING AND MINERALS
CORPORATION,

Defendants.

FILED

MAY 5 1992
CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
Sacto

CIVIL ACTION NO.

CONSENT DECREE

90-11-2-360

DEPARTMENT OF JUSTICE
3 1992
LANDS DIVISION
ENFORCEMENT RECORDS

LODGED
MAY 28 1992
U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
CLERK'S OFFICE

DAW

EPA REGION IX

Judicial

RECEIVED

ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

SEP 23 1992

PART I. TO BE COMPLETED BY ORIGINATING OFFICE

(Attach a copy of the final order and transmittal letter to Defendants/Respondent; Route to P-4-2)

Office of Comptroller
U. S. EPA, Region 9

A. This was originated by:

Sabrina Torres
(Name of contact person)9/22/92
(Date)

in the Office of the Regional Counsel

(Office)

at

744-

1369
(Phone Number)B. ☐ Non-SF Jud. Order/Consent Decree.
(USAO COLLECTS)☒ SF Jud. Order/Consent Decree.
(FMO [P-4-2] COLLECTS)C. ☒ This is an original debt☐ This is a modificationD. Name of Person and/or Company/Municipality making the payment: Atlas Corp.(only the amount due to EPA)
Total Dollar Amount of Receivable \$1,620,748.05(see page(s) 41)

(If in installments, attach schedule of amounts and respective due dates)

Case Docket Number

92-837

entered date:

8/12/92

Debtor's Address:

Superfund Site-Specific Account Number

34

Designated Regional/HQ Program Office

SF

PART II. TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE (P-4-2)

The IFMS Accounts Receivable Control Number

ED 09292T056A-7E

If you have any questions, call:

Tiffanie PangC Shen

at

744-2729-1741

(Name of Contact)

(Phone Number)

in the Office of the Comptroller.

PART III. TO BE ROUTED BY THE LOCAL FINANCIAL MANAGEMENT OFFICE (P-4-2)

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final Judicial Order should be mailed to:

(attn: Rosemarie Pacheco)

1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice/Rm. 1647D
POBox 7611, Benjamin Franklin Station
Washington, DC 20044

2. Originating Office (ORC)
3. Designated Program Office

Originating OfficeRegional Billing Clerk (ORC)Designated Program Office

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PARTIAL CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed concurrently with this Consent Decree a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to compel the "Defendants" (those parties identified in Section II of this document) to perform remedial actions and to recover response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the facility known as the Atlas Mine Area Operable Unit ("Mine Area OU," also referred to herein as the "Site") of the Atlas Asbestos Mine Superfund Site ("Atlas Mine Site"), located in Fresno County, California.

B. WHEREAS, in accordance with Sections 106(a) and 121(f)(1)(F) of CERCLA, 42 U.S.C. §§ 9606(a) and 9621(f)(1)(F), EPA notified the State of California (the "State") on March 29, 1991 of negotiations with potentially responsible parties regarding the scope of the remedial design and remedial action for the Mine Area OU Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to any settlement.

1 C. WHEREAS, the Mine Area OU is an approximately 1.8 square
2 kilometer (450 acre) tract of land located in the upper White
3 Creek Watershed just south of the San Joaquin Ridge in the
4 southern Diablo Mountains, Sections 31 and 32, Township 18 South,
5 Range 13 East, in western Fresno County, California. The nearest
6 population center is the City of Coalinga (population 8250),
7 which is located approximately 29 kilometers (18 miles) to the
8 southeast. An asbestos mining and milling operation was con-
9 ducted at the Mine Area OU from approximately 1962 to 1979, and,
10 over the course of this seventeen year period, asbestos ore was
11 mined, processed and sorted with the result that asbestos con-
12 taining materials remain in the vicinity of the milling facility.
13 An estimated 2.3 million cubic meters (3 million cubic yards) of
14 asbestos containing materials remain at the Mine Area OU.

15 D. WHEREAS, pursuant to Section 105(8) of CERCLA, 42 U.S.C.
16 § 9605(8), EPA placed the Atlas Asbestos Mine Superfund Site on
17 the National Priorities List ("NPL") on September 21, 1984.

18 E. WHEREAS, in response to a release or a substantial
19 threat of a release of a hazardous substance at or from the Site,
20 EPA commenced on July 9, 1985, a Remedial Investigation and
21 Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R.
22 §300.68, and completed the RI/FS on March 19, 1990.

23 F. WHEREAS, on April 11, 1990, pursuant to Section 117 of
24 CERCLA, 42 U.S.C. § 9617, EPA issued a public notice concerning
25 EPA's proposed remedial action for the Site and the public com-
26 ment period.

1 G. WHEREAS, the decision by EPA on the remedial action to
2 be implemented at the Mine Area OU is embodied in a final Record
3 of Decision (ROD), dated February 14, 1991, on which the State
4 had a reasonable opportunity to review and comment.

5 H. WHEREAS, in accordance with Section 121(d)(1) of CERCLA,
6 EPA and Defendants (the "Parties") agree that the remedial action
7 plan adopted by EPA and embodied herein will attain a degree of
8 cleanup and/or remediation at the Site, and control the potential
9 for releases from the Site, such that human health and the en-
10 vironment are protected.

11 I. WHEREAS, the Parties recognize, and the Court by enter-
12 ing this Consent Decree finds, that implementation of this Con-
13 sent Decree will expedite the cleanup and/or remediation of the
14 Site and will avoid prolonged and complicated litigation between
15 the Parties, and that entry of this Consent Decree is in the
16 public interest.

17 J. WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.
18 § 9622 the United States and Defendants have each stipulated and
19 agreed to the making and entry of this Partial Consent Decree
20 ("Decree" or "Consent Decree") prior to the taking of any tes-
21 timony, in a good faith effort to avoid expensive and protracted
22 litigation.

23 K. WHEREAS, the Parties agree that the execution of this
24 Consent Decree by Defendants does not constitute and shall not be
25 construed to constitute an admission or acknowledgment of any
26
27
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1 liability or responsibility for the City of Coalinga Operable
2 Unit, the Ponding Basin at the California Aqueduct or the Clear
3 Creek Management Area.

4 L. WHEREAS, Defendants and EPA agree that the remedy
5 selected in the ROD and incorporated herein, and which Defendants
6 agree to implement requires cleanup and/or remediation only of
7 the Mine Area Operable Unit, as defined in Section IV.K below,
8 and not of "the Ponding Basin at the California Aqueduct," as
9 that area is defined in the ROD, or any other area.

10
11 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol--
12 lows:

13
14
15
16 I. JURISDICTION

17 The Court has jurisdiction over the subject matter of this
18 action and the signatories to this Consent Decree pursuant to
19 Sections 106, 107, 113 and 122 of CERCLA, 42 U.S.C. §§ 9606,
20 9607, 9613, 9622 and 28 U.S.C. §§ 1331, 1345. Defendants shall
21 not challenge the Court's jurisdiction to enter and enforce this
22 Consent Decree. Defendants listed in Section II (Parties) waive
23 service of summons and, for the purpose of this Consent Decree,
24 agree to submit themselves to the jurisdiction and venue of this
25 Court.

1 II. PARTIES

2 The parties to this Consent Decree are the United States of
3 America and Defendants. Defendants are those entities listed
4 below:

5
6 Atlas Corporation

7 Vinnell Mining and Minerals Corporation

8
9 III. BINDING EFFECT

10 This Consent Decree shall apply to and be binding upon the
11 United States and the Defendants to this Consent Decree, their
12 officers, directors, officials, successors, and assigns (all of
13 the foregoing acting in their representative capacities only) and
14 upon all persons, contractors, and consultants acting under or
15 for Defendants or EPA or both in this case only. No change in
16 ownership or corporate or partnership status will in any way al-
17 ter the Defendants' responsibilities under this Consent Decree.
18 Defendants agree that they are jointly and severally liable in
19 this case only for compliance with all provisions of this Decree.
20 The Defendants are responsible and will remain responsible for
21 carrying out all activities required of the Defendants under this
22 Consent Decree. The Defendants shall provide a copy of this Con-
23 sent Decree, as entered, and shall provide all relevant additions
24 to the Consent Decree, as appropriate, to each person, including
25 all contractors and subcontractors, at the time any such person
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1 is retained to perform the work contemplated by this Decree, and
2 shall condition any contract for the work upon compliance with
3 this Consent Decree.

4 Defendants shall nonetheless be responsible for ensuring
5 that their contractors and subcontractors perform the work con-
6 templated herein in accordance with this Consent Decree. In the
7 event of the inability to pay or insolvency of any one or more of
8 Defendants, regardless of whether or not that Defendant or Defen-
9 dants enter into formal bankruptcy proceedings, or in the event
10 that for any other reason one or more of Defendants do not par-
11 ticipate in the implementation of the work, the remaining Defen-
12 dants agree to fully comply with the terms and conditions of this
13 Consent Decree.

14 The willingness of the Defendants to perform the work
15 described herein does not obligate them to perform any work at
16 any other operable unit of this Site. The parties agree and the
17 Court orders that this Consent Decree may not be used or intro-
18 duced into evidence in any other proceeding.

1 IV. DEFINITIONS

2 Unless otherwise expressly provided herein or below, terms
3 used in this Consent Decree which are defined in CERCLA, or in
4 regulations promulgated under CERCLA, shall have the meaning as-
5 signed to them in the statute or regulations. Whenever terms
6 listed below are used in this Consent Decree or in the Exhibits
7 or Appendices attached hereto or incorporated hereunder, the fol-
8 lowing definitions shall apply:

- 9
- 10 A. "Appendix A" shall mean The Record Of Decision (ROD)
11 for the Mine Area Operable Unit Remedial Action dated
12 February 14, 1991.
- 13 B. "Appendix B" shall mean the Scope of Work ("SOW") for
14 the Mine Area Operable Unit.
- 15 C. "CERCLA" shall mean the Comprehensive Environmental
16 Response, Compensation, and Liability Act, 42 U.S.C. §
17 9601 et seq., as amended by the Superfund Amendments
18 and Reauthorization Act of 1986, Pub. L. No. 99-499,
19 100 Stat. 1613 (1986).
- 20 D. "Contractor" shall mean the individual, company or com-
21 panies retained by or on behalf of Defendants to under-
22 take and complete the Remedial Action.
- 23 E. "Day" shall mean a calendar day unless expressly stated
24 to be a working day. "Working day" shall mean a day
25 other than a Saturday, Sunday or legal holiday. In
26 computing any period of time under this Consent Decree,
- 27
28

1 where the last day would fall on a Saturday, Sunday, or
2 legal holiday, the period shall run until the end of
3 the next working day.

4 F. "Defendants" shall mean those parties identified as
5 Defendants and listed as such in Section II (Parties)
6 of this Consent Decree.

7 G. "EPA" shall mean the United States Environmental
8 Protection Agency.

9 H. "DOHS" shall mean the California Department of Health
10 Services.

11 I. "Future Liability" shall mean liability arising after
12 EPA's Certificate of Completion is issued pursuant to
13 Section XXXIX (Certification of Completion).

14 J. "National Contingency Plan" or "NCP" shall refer to the
15 National Oil and Hazardous Substances Pollution Contin-
16 gency Plan, 40 C.F.R. Part 300, and shall be used as
17 that term is referred to in Section 105 of CERCLA, 42
18 U.S.C. § 9605, including any amendments thereto.

19 K. "Mine Area OU" or the "Site" means the area defined in
20 the ROD as the Atlas Mine Area Operable Unit; the Mine
21 Area OU is located in the White Creek Watershed, ap-
22 proximately 18 miles (29 kilometers) northwest of
23 Coalinga, Fresno County, California; the Site encom-
24 passes approximately 450 acres (1.8 square kilometer),
25 as described in the ROD and depicted on the map in-
26 cluded as Figure 1 in the ROD. The term "Site" as used
27
28

1 and defined in this Decree does not include the City of
2 Coalinga Operable Unit, the Ponding Basin or the Clear
3 Creek Management Area.

4 L. "Future Response Costs" shall mean all costs, including
5 but not limited to, indirect costs, that the EPA incurs
6 in overseeing the Work, including but not limited to
7 payroll costs, contractor costs, travel costs,
8 laboratory costs, and the costs of reviewing or
9 developing plans, reports and other items pursuant to
10 this Consent Decree, verifying the Work, or otherwise
11 implementing or enforcing this Consent Decree including
12 by the United States Department of Justice, on behalf
13 of EPA. Future Response Costs shall also include all
14 costs, including indirect costs, incurred by EPA, in-
15 cluding by the United States Department of Justice, on
16 behalf of EPA, in connection with the Site between
17 November 30, 1990 (the date on which accounting for
18 Past Costs as described in Section XX of this Decree
19 ends) and prior to the effective date of this Consent
20 Decree.

21 M. "Parties" means the United States and the Defendants.

22 N. "Past Response Costs" shall mean all costs incurred by
23 EPA pursuant to CERCLA in connection with the Site
24 prior to and including November 30, 1990.
25
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1 O. "Performance Standards" shall mean those cleanup and/or
2 remediation standards, standards of control, and other
3 substantive requirements, criteria, or limitations set
4 forth in the ROD and Appendix B, the SOW.

5 P. "Plaintiff" or "United States" means the United States
6 of America.

7 Q. "Record of Decision" or "ROD" shall mean the document
8 signed by the EPA Region IX Regional Administrator on
9 February 14, 1991, which describes the Operable Unit
10 Remedial Action to be conducted at the Site, and which
11 is attached hereto as Appendix A and incorporated
12 herein.

13 R. "Remedial Action Work" shall mean the phases of the
14 Work involving the construction of the remedy in accor-
15 dance with the Remedial Design documents, the ROD and
16 this Consent Decree.

17 S. "Remedial Action Reports" shall mean the reports
18 developed by Defendants in compliance with this Consent
19 Decree, detailing the Work and the results of the
20 Remedial Action implementation.

21 T. "Remedial Design Work" shall mean the phases of the
22 Work wherein engineering plans and technical specifica-
23 tions are developed for implementation of the Remedial
24 Action, in accordance with the ROD and this Consent
25 Decree.

- 1 U. "Remedial Design Reports" shall mean the reports
2 developed by Defendants in compliance with this Consent
3 Decree, detailing the Work and the results of the
4 Remedial Design at the four phases described in the EPA
5 Superfund Remedial Design and Remedial Action Guidance,
6 dated June 1986 ("RD/RA guidance").
- 7 V. "Scope of Work" or "SOW" shall mean the scope of work
8 for implementation of the remedial design, remedial ac-
9 tion and operation and maintenance of the remedial ac-
10 tion at the Site, as set forth in Appendix B to this
11 Consent Decree.
- 12 W. "State" shall mean the State of California.
- 13 X. "Waste Material" shall mean (1) any "hazardous sub-
14 stance" under Section 101(14) of CERCLA, 42 U.S.C.
15 § 9601(14); (2) any "pollutant" or "contaminant" under
16 Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3)
17 any "hazardous waste" under Section 1004(5) of RCRA, 42
18 U.S.C. § 6903(5).
- 19 Y. "Work" shall mean the implementation, in accordance
20 with Section VII hereof (Work to be Performed) of the
21 Record of Decision and the SOW, as defined in this Con-
22 sent Decree, and as may be modified pursuant to the
23 provisions of this Consent Decree, and any schedules or
24 plans required to be submitted pursuant thereto.
- 25 Z. "Workplan" or "workplans" shall mean the workplan
26 developed by the Defendants which detail the work to be
27 conducted pursuant to this Consent Decree.
- 28

1 V. PURPOSE

2 The purpose of this Consent Decree is to serve the public
3 interest by protecting the public health, welfare, and the en-
4 vironment from releases and threatened releases of hazardous sub-
5 stances at or from the Site by the implementation by Defendants
6 of remedial actions and operations, monitoring, and maintenance
7 outlined in Section VII (Work to be Performed) of this Consent
8 Decree; to obtain reimbursement from Defendants for Plaintiff's
9 response costs; and to settle all claims against Defendants as-
10 serted by Plaintiff with regard to this Site in the Complaint
11 filed in this matter.

12 The Record of Decision ("ROD") for this Operable Unit is
13 set forth in Appendix A. In general terms, the selected remedy
14 for this Operable Unit involves design, construction and opera-
15 tion of access restrictions and engineering systems that will
16 reduce the amount of asbestos released from the Mine Area OU.

17 The parties agree that remedial action may be proposed by
18 EPA for other Operable Units, including the Ponding Basin and the
19 Clear Creek Management Area, as stated in the ROD.

20 EPA agrees that the Defendants reserve any and all objec-
21 tions and defenses they may have to liability for response ac-
22 tions performed or to be performed, or costs incurred or to be
23 incurred at any other Operable Unit, and that such objections and
24 defenses may be raised and asserted notwithstanding this Consent
25 Decree.

1 All parties agree and the Court hereby determines that the
2 remedy selected by the ROD is consistent with the National Oil
3 and Hazardous Substances Pollution Contingency Plan, 40 C.F.R.
4 Part 300 (hereinafter "National Contingency Plan" or "NCP"). The
5 work performed in the implementation of this remedial action
6 shall meet the substantive standards of all "applicable require-
7 ments" and "relevant and appropriate requirements" as those terms
8 are defined in 40 C.F.R. § 300.6, as generally described in
9 CERCLA Compliance with Other Environmental Statutes, October 2,
10 1985 (50 Fed. Reg. 47946, November 20, 1985), and as is required
11 by Section 121 of CERCLA, 42 U.S.C. § 9621.

12
13 VI. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

14 A. Within thirty (30) days after the entry of this Consent
15 Decree, Defendants shall record a certified copy of this Consent
16 Decree with the Recorder's Office, Fresno County, State of
17 California.

18
19 VII. WORK TO BE PERFORMED

20 A. General Obligations Regarding the Remedial Actions

21 1. Subject to the conditions set forth in this Consent
22 Decree, Defendants shall finance and perform, at their expense,
23 the implementation of the Work as required by this Decree and the
24 Appendices hereto.

1 2. Defendants shall conduct no activities at the Site ex-
2 cept: (1) activities specifically authorized under this Section
3 VII (Work To Be Performed): or (2) activities required by and in
4 furtherance of the Work under this Consent Decree; or (3) ac-
5 tivities otherwise specifically authorized, in writing, by EPA.

6 3. Notwithstanding any approvals which may be granted by
7 the United States or other governmental entities, Defendants
8 shall assume any and all liability of the United States arising
9 from or relating to Defendants' acts or omissions or the acts or
10 omissions of any of their contractors, subcontractors, or any
11 other person acting on Defendants' behalf (except to the extent
12 such contractors, subcontractors or other persons are acting at
13 the direction of the United States pursuant to Section VII.A.16)
14 in the performance of the Work or their failure to perform fully
15 or complete the Work. This does not apply to or in any way af-
16 fect any liability of the United States arising by virtue of its
17 ownership of portions of the Site, or any management of the Site
18 by the United States, or as a result of any remedial action or
19 other work undertaken by or on behalf of the United States.

20 4. Defendants shall appoint a representative ("Project
21 Coordinator") designated by them to act on their behalf to ex-
22 ecute the Work, in accordance with Section XII (Project
23 Coordinator).

24 5. The Defendants shall perform the Work for the Site in ac-
25 cordance with all of the provisions of this Decree, and in accor-
26 dance with the ROD, attached hereto as Appendix A, the Scope of
27 Work ("SOW") attached hereto as Appendix B, and any modifications
28

1 thereto, as well as all design specifications, Work Plans, other
2 plans and schedules approved by EPA. The ROD, the SOW, and all
3 modifications to the SOW, as well as all EPA approved design,
4 specifications, Work Plans, other plans and schedules are hereby
5 incorporated by reference and made a part of this Decree. In the
6 event of any conflict between the Decree and the SOW or any other
7 EPA approved document incorporated into this Decree, the Decree
8 shall control. In the event of any conflict between the ROD and
9 the Decree, the Decree shall control.

10 6. The major components of the selected remedy for the
11 Site, as described in the ROD, are as follows:

12
13 a) Constructing stream diversions to divert flow
14 away from the tailings pile;

15 b) Constructing sediment trapping dams to minimize
16 the release of asbestos into local creeks;

17 c) Constructing a fence or other appropriate controls
18 around the disturbed areas to limit access;

19 d) Conducting a revegetation pilot project to determine
20 whether revegetation is a practical means of increasing
21 stability and minimizing erosion of the disturbed
22 areas and implementing revegetation if it is found to be
23 feasible;

24 e) Dismantling of the mill building and disposal of
25 all debris;

26 f) Performing operation and maintenance activities

27 g) Road paving or an appropriate engineering
28

1 alternative; and

2 h) Filing deed restrictions.

3
4 The manner in which Defendants will implement these ele-
5 ments of the ROD is more specifically described in the SOW.

6 Regarding the requirement for fencing or other appropriate con-
7 trols to limit access to the Site, the Bureau of Land Management
8 ("BLM") has heretofore constructed a fence around the Site. The
9 Parties agree that the existing fence is adequate to meet the re-
10 quirements of the ROD and this Consent Decree. Defendants are
11 not required to implement the deed restriction requirement of the
12 Consent Decree other than as provided in Section VI. (Notice of
13 Obligations to Successors-in-Title).

14
15 7. All Remedial Design Work to be performed by Defendants
16 pursuant to this Consent Decree shall be under the direction and
17 supervision of a qualified professional engineer. Within thirty
18 (30) days after the lodging of this Consent Decree with the Court
19 and prior to the initiation of the Remedial Design Work for the
20 Site, the Defendants shall notify EPA, in writing, of the name,
21 title, and qualifications of the supervising engineer proposed to
22 be used in carrying out the Remedial Design Work to be performed
23 pursuant to this Consent Decree. Selection of any such engineer
24 shall be subject to disapproval by EPA. If EPA disapproves of
25 the selection of any supervising engineer, the Defendants shall
26 submit a list of engineers to EPA within thirty (30) days of dis-
27 approval of the engineer previously selected. Defendants may

1 select from this list any one of the engineers which is approved
2 by EPA. Within thirty (30) days after EPA provides approval of
3 any engineers from Defendants' list, Defendants shall notify EPA
4 of the name of the engineer which they have selected.

5 8. All Remedial Action Work to be performed by the Defen-
6 dants pursuant to this Consent Decree shall be under the direc-
7 tion and supervision of a qualified professional engineer and
8 performed by a qualified contractor. Within sixty (60) days
9 after lodging of this Decree with the Court and prior to the in-
10 itiation of remedial action work at the Site, the Defendants
11 shall notify EPA, in writing, of the name, title, and qualifica-
12 tions of the proposed supervising engineer. Within sixty (60)
13 days of EPA's approval of the Final Design Submittals, as
14 provided in Appendix B, Defendants shall notify EPA in writing of
15 the names of principal contractors and/or subcontractors proposed
16 to be used in carrying out the Remedial Action Work pursuant to
17 this Consent Decree. Selection of any such engineer and contrac-
18 tor and/or subcontractor shall be subject to disapproval by the
19 EPA in accordance with the provisions of Paragraph 7 of this Sec-
20 tion. If at any time thereafter Defendants propose to change su-
21 pervising engineers or principal contractor and/or subcontrac-
22 tors, Defendants shall give written notice to EPA and shall ob-
23 ~~tain approval from EPA~~ before the new supervising engineer or
24 principal contractor and/or subcontractor performs any work under
25 this Consent Decree. All work performed by Defendants shall be
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27
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1 performed by qualified engineers and/or contractors or sub-
2 contractors in accordance with the conditions and schedules
3 specified in this Decree.

4 9. Reserved.

5 10. Within sixty (60) days of the lodging of this Consent
6 Decree, Defendants shall submit a Draft Remedial Design Work Plan
7 to EPA. The Work Plan shall be developed in conformance with the
8 ROD, the SOW, EPA Superfund Remedial Design and Remedial Action
9 Guidance and any additional guidance documents provided by EPA.

10 11. The Work Plan submittal shall describe how the Defen-
11 dants will implement the selected remedy at the Site and will be
12 consistent with the SOW.

13 12. The Work Plan and other required documents and reports ;
14 shall be subject to review by EPA. EPA shall approve, disapprove
15 with comment, or approve with modifications such workplans or
16 other documents. Defendants shall revise disapproved documents
17 and submit such modified documents to EPA as promptly as pos-
18 sible, but not later than thirty (30) days after receipt of the
19 notice of disapproval.

20 13. Defendants shall implement the work detailed in the
21 Work Plan as approved or modified by EPA. The fully approved
22 Work Plan shall be deemed incorporated into and made an enforce-
23 able part of this Consent Decree. Upon approval of the Work Plan
24 by EPA, Defendants shall file a copy of the Plan with the Court
25 to be incorporated into this Consent Decree. Any noncompliance
26 with any EPA approved reports, plans, specifications, schedules,
27 appendices, or attachments to the Work Plan shall be considered a
28

1 failure to comply with this Decree and shall subject Defendants
2 to stipulated penalties as provided in Section XXI (Stipulated
3 Penalties). In the event of any inconsistency between the SOW
4 and the Work Plan, the Workplan shall govern. All work shall be
5 conducted in accordance with the National Contingency Plan, the
6 EPA Superfund Remedial Design and Remedial Action Guidance, and
7 the requirements of the Consent Decree, including the standards,
8 specifications and schedules contained in the Work Plan.

9 14. The Parties acknowledge and agree that neither the SOW
10 the Work Plan nor any approvals, permits or other permissions
11 which may be granted by EPA related to this Consent Decree con-
12 stitute a warranty or representation of any kind by Plaintiff
13 that the SOW or Work Plan will achieve the Standards set forth in
14 the ROD, and in Paragraph 15 below and shall not foreclose Plain-
15 tiff from seeking performance of all terms and conditions of this
16 Consent Decree. Nothing in this Consent Decree shall be con-
17 strued to relieve Defendants of their obligation to achieve all
18 standards set forth in the ROD, the SOW, and in Paragraph 15
19 below.

20 15. Defendants shall meet all standards identified in the
21 ROD and in the SOW with respect to the Work at this operable
22 unit, including, but not limited to, the following:

23 a) Control asbestos emissions in accordance with the
24 Clean Air Act, National Emission Standard for Hazardous Air Pol-
25 lution by use of an alternative control method determined to be
26 appropriate for this Site by the EPA Region 9 Regional Ad-
27 ministrator.

1 b) Conform with the particulate matter standards (PM
2 10) of the California Air Resources Act as interpreted by the EPA
3 Region 9 Regional Administrator.

4 c) Protect endangered species in accordance with the
5 Endangered Species Act of 1973.

6 d) Minimize habitat loss in accordance with the United
7 States Fish and Wildlife Service Mitigation Policy.

8 e) Minimize adverse impacts on waters of the United
9 States in accordance with the Federal Water Pollution Control
10 Act.

11 f) Comply with the substantive restrictions in the
12 California Hazardous Waste Control Laws, which EPA has determined
13 allows on-site management and disposal of asbestos and asbestos
14 materials in the context of this remedial action.

15 g) Protect worker health and safety in accordance with
16 the Occupational Safety and Health Act.

17 h) Construct engineering systems in accordance with the
18 California Porter-Cologne Water Quality Act.

19
20 16. In the event EPA determines that the Defendants have
21 failed to implement the Work or any portions thereof in a timely
22 or adequate manner, the United States or its designate may per-
23 form such portions of the Work as EPA determines may be neces-
24 sary. If the United States performs all or portions of the Work
25 because of the Defendants' failure to comply with their obliga-
26 tions under this Consent Decree, the Defendants shall reimburse
27 the United States for the costs of doing such Work, plus any ap-
28

1 applicable stipulated penalties as set forth in Section XXI
2 (Stipulated Penalties). EPA will provide Defendants' Project
3 Coordinator with 20 days advance written notice of the United
4 States' intent to perform a portion or all of the Work, unless
5 EPA determines that a more immediate response is needed to ad-
6 dress a threat to human health or the environment. Any disputes
7 regarding EPA's decision(s) under this Section shall be resolved
8 pursuant to Section XXIII (Dispute Resolution) of this Decree.

9 17. Defendants shall dispose of any materials taken off-
10 site in compliance with the EPA's Revised Procedures for Im-
11 plementing Off-Site Response Actions ("Offsite Policy") (EPA OS-
12 WER Directive 9834.11, November 13, 1987) and any amendments
13 thereto. The United States agrees that Defendants may dispose of
14 the mill building, debris, sediment from catchment ponds, and any
15 waste developed on-site during performance of the remedial work
16 or operation and maintenance work on the site in accordance with
17 procedures to be contained in an approved Workplan.

18 18. Defendants shall submit all monthly reports prepared by
19 their supervising engineer, contractors and subcontractors con-
20 cerning the ROD to EPA and EPA's designated oversight personnel,
21 according to the schedules set forth in this Consent Decree.

22
23 The Work, the applicable schedule and the required deliverables
24 are further described in Appendix B to this Consent Decree.

1 B. Obligations Regarding Documents to be submitted

2 ("Deliverables"):

3 (1) Monthly Progress Reports:

4 Defendants shall provide written progress reports to EPA on
5 a monthly basis. These progress reports shall describe all ac-
6 tions taken to comply with this Consent Decree, including a
7 general description of activities commenced or completed during
8 the reporting period, Work activities projected to be commenced
9 or completed during the next reporting period, and any problems
10 that have been encountered or are anticipated by Defendants in
11 commencing or completing the Work activities. These progress
12 reports shall also include tables and explanations as specified
13 in Sections D(1)(b)(iii) and D(1)(b)(iv) of the SOW - Appendix B.
14 These progress reports shall be submitted to EPA by the 15th of
15 each month for work done the preceding month and planned for the
16 current month.

17 (2) [Reserved]

18 (3) Community Relations Plan. Defendants shall submit a
19 plan for soliciting public input and informing the public of
20 status of the Work. The plan shall provide for written com-
21 munication with community members ("fact sheets") and community
22 meetings.

23 (4) Preliminary Design. Defendants shall submit a prelimi-
24 nary design (30% final design) for the Work that includes, but is
25 not limited to:

26 (a) no less than 30% total design plans and
27 specifications,

1 (b) all items identified in Section D(4) of the
2 SOW - Appendix B,

3 (c) compliance with clean-up standards and ARARS,
4 and

5 (d) site safety plan.

6 (5) Prefinal/Final Design. Defendants shall submit a
7 prefinal and final Work plan in two parts as described in Section
8 D(5) of the SOW - Appendix B, including, but not limited to:

9 (a) the Prefinal Plan shall show 90% completion of
10 the design and include, but not be limited to:

11 (i) all revisions of and additions to the
12 preliminary design:

13 (ii) construction drawings.

14 (iii) specifications.

15 (iv) schedules.

16 (v) cost estimates.

17
18 (b) Final Design shall include, but not be limited
19 to:

20 (i) all revisions of and additions to the 90%
21 design.

22 (ii) final construction drawings.

23 6. Defendants shall, pursuant to the schedule in the SOW
24 attached to this Decree as Appendix B, submit a draft and a final
25 of each of the above deliverables (except the monthly report).
26 Any failure of Defendants to submit a deliverable in compliance
27 with the schedule will be deemed a violation of this Decree.

1 7. After review of any plan, report, draft deliverable or
2 other item which is required to be submitted for approval by EPA
3 pursuant to this Consent Decree, EPA will either: (a) approve the
4 submission; (b) disapprove the submission, notifying the Defen-
5 dants of the deficiencies and requiring resubmittal within a
6 stated period of time; or (c) approve the submission with
7 modifications.

8 8. Defendants shall, within the time allotted in the
9 schedule, either: (a) proceed to take any action required by the
10 approved or modified submission; or (b) correct the deficiencies
11 as determined by EPA and resubmit the plan, report, draft or
12 other item for approval. In the event EPA determines that there
13 are deficiencies in the submissions, Defendants shall proceed, at
14 the direction of EPA, to take any action required by any non-
15 deficient portion of the submission, that is not dependent upon
16 performance of the deficient portions of the submission.

17 9. Any failure by Defendants to revise, modify or correct
18 deficiencies as directed by EPA within the time allotted in the
19 schedule will be deemed a violation of this Consent Decree. Im-
20 plementation of non-deficient portions of the submission shall
21 not relieve Defendants of their liability for stipulated
22 penalties under Section XXI (Stipulated Penalties) for non-
23 performance of deficient portions of the submission.

VIII. ADDITIONAL WORK

A. In the event that EPA or Defendants determine(s) that additional work is necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, and that such additional work is necessary to prevent or terminate a release or threat of release that may present an imminent and substantial endangerment to human health, notification of such additional work shall be provided to the Project Coordinator for the other party(ies). Any additional work determined to be necessary by Defendants is subject to approval by EPA.

B. Within sixty (60) days of receipt of notice by EPA that additional work is necessary pursuant to this Section, or such longer time as may be specified by EPA, the Defendants shall submit a work plan for the additional work to EPA. EPA shall have the right to approve, disapprove or approve with modifications such work plan. The plan shall conform to the requirements in Section VII (Work To Be Performed) and shall be consistent with the NCP. Any determination by EPA that additional work is required is subject to the dispute resolution provisions contained in Section XXIII (Dispute Resolution).

C. Any additional work determined to be necessary by Defendants and approved by EPA, or determined to be necessary by EPA to carry out the remedy described in the ROD or to meet the Performance Standards, shall be completed by Defendants in accordance with the standards, specifications, and schedules approved by EPA.

1 D. If EPA disapproves the plan pursuant to the provisions
2 of Section VII (Work To Be Performed), Defendants, consistent
3 with Section VII (Work To Be Performed), shall submit a modified
4 plan. EPA may also approve the plan with modifications.

5 E. Any determination that additional work is necessary under
6 this section must be made prior to the Certification of Comple-
7 tion provided for in Section XXXIX.

8
9 IX. WORKER HEALTH AND SAFETY PLAN

10 The Worker Health and Safety Plan that the Defendants will
11 submit pursuant to Section VII (Work to be Performed) and Appen-
12 dix B of this Consent Decree shall be prepared in conformance
13 with applicable Occupational Safety and Health Administration and
14 EPA requirements, including but not limited to those requirements
15 found at 54 Fed. Reg. 9294 et seq.

16
17 X. PERIODIC REVIEW TO ASSURE PROTECTION
18 OF HUMAN HEALTH AND THE ENVIRONMENT

19 A. Notwithstanding the provisions of Section XXVIII
20 (Covenant Not To Sue) and to the extent required by Section
21 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regula-
22 tions, EPA will review the Remedial Action at the Site at least
23 every five (5) years after the entry of this Consent Decree to
24 assure that human health and the environment are being protected.
25 For a period not to exceed thirty (30) years, EPA or its contrac-
26 tors who are to conduct such review will provide written notice
27 of the date and time of any inspection of the remedial work at
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1 the Site not less than ten (10) days prior to such inspection,
2 and the Defendants will be permitted the opportunity to have rep-
3 resentatives present during such inspection. For that same
4 period, not to exceed thirty (30) years, whether or not EPA has
5 provided Defendants with such notice, Defendants shall reimburse
6 EPA for its costs in performing these reviews, and shall be sub-
7 ject to stipulated penalties for failure to pay such costs, even
8 following termination of this Consent Decree as defined in Sec-
9 tion XL (Termination and Satisfaction) of this Decree. If upon
10 such review, EPA determines that further response action neces-
11 sary to protect human health or the environment in accordance
12 with Sections 104 or 106 of CERCLA is appropriate at the Site and
13 the conditions for reopening of liability in Section XXVIII
14 (Covenant Not To Sue) are met, then the United States may take or
15 require that Defendants take such action. Any such determination
16 by EPA may be disputed by Defendants pursuant to the dispute
17 resolution procedures of Section XXIII (Dispute Resolution) of
18 this Consent Decree.

20 XI. CONSTRUCTION QUALITY CONTROL

21 A. The Construction Quality Control (CQC) plan that Defen-
22 dants shall submit pursuant to Section VII (Work to be Performed)
23 of this Consent Decree shall, where applicable, be prepared in
24 accordance with current EPA guidance (e.g. Interim Guidelines and
25 specifications for Preparing Quality Assurance Project Plans,
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27
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1 QAMS-005/80) and all relevant EPA Region IX guidance. Upon ap-
2 proval and notice by EPA to the Defendants, Defendants shall
3 implement the CQC Plan

4 B. Defendants shall use quality control procedures in ac-
5 cordance with the CQC plans submitted pursuant to this Decree,
6 and shall utilize standard EPA chain of custody procedures, as
7 documented in the National Enforcement Investigations Center
8 Policies and Procedures Manual as revised in May 1986 and any
9 amendments thereto, and the National Enforcement Investigations
10 Center Manual for the Evidence Audit, published in September 1981
11 and any amendments thereto, for all sample collection and
12 analysis activities, unless other procedures are approved by EPA.
13 In order to provide quality assurance and maintain quality con-
14 trol regarding all samples collected pursuant to this Decree, the
15 Defendants shall, at a minimum, ensure that the following quality
16 control measures are employed at laboratories utilized for
17 analysis:

18 1. All contracts with laboratories utilized by Defen-
19 dants for analysis of samples taken pursuant to this Consent
20 Decree shall provide for access of EPA personnel and EPA
21 authorized representatives to assure the accuracy of laboratory
22 results related to the Site.

23 2. Any laboratory utilized by Defendants for analysis
24 of samples taken pursuant to this Consent Decree shall perform
25 all analyses according to methods approved by EPA and submit all
26 protocols to be used for analysis to EPA in the plans and docu-
27 ments required under this Consent Decree.

1 3. All laboratories utilized by Defendants for
2 analysis of asbestos samples taken pursuant to this Decree shall
3 participate in an EPA or EPA equivalent QA/QC program. As part
4 of the QA/QC program and upon request by EPA, such laboratories
5 shall perform at Defendants' expense analyses of samples provided
6 by EPA to demonstrate the quality of each laboratory's data.

7 C. Sampling data generated consistent with the CQC Plans
8 shall be admissible as evidence, without objection except as to
9 relevance, in any proceeding under Section XXIII (Dispute Resolu-
10 tion) of this Decree.

11 D. Notwithstanding any provision of the Consent Decree, the
12 United States retains all of its information gathering, inspec-
13 tion and enforcement authorities and rights under CERCLA, and any
14 other applicable statutes or regulations.

15 16 XII. PROJECT COORDINATOR

17 A. By the effective date of this Consent Decree, EPA and
18 Defendants shall each designate a Project Coordinator to monitor
19 the progress of the Work, to coordinate communication between EPA
20 and the Defendants and to oversee the implementation of this Con-
21 sent Decree. EPA and Defendants each have the right to change
22 their respective Project Coordinator. Such a change shall be ac-
23 ~~complished by notifying the other party in writing at least five~~
24 ~~days prior to the change. To the maximum extent possible, com-~~
25 ~~munications between Defendants and EPA and all documents, includ-~~
26 ~~ing reports, approvals, and other correspondence concerning the~~
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1 activities performed pursuant to the terms and conditions of this
2 Consent Decree, shall be directed through the Project Coor-
3 dinators.

4 B. The EPA Project Coordinator shall have the authority
5 vested in the On-Scene Coordinator by 40 C.F.R. § 300 et seq.,
6 including such authority as may be added by amendments to 40
7 C.F.R. § 300, as well as the authority to ensure that the Work is
8 performed in accordance with all applicable statutes, regula-
9 tions, and this Consent Decree.

10 C. Defendants' Project Coordinator may assign other repre-
11 sentatives, including other contractors, to serve as a site rep-
12 resentative for oversight of performance of daily operations
13 during remedial activities, and shall provide EPA with notice in
14 writing of such assignments no later than the first day on which
15 a site representative begins acting in that capacity.

17 XIII. SITE ACCESS

18 A. To the extent that the Site or other areas where the
19 Work is to be performed is presently owned or controlled by
20 parties other than Defendants or to the extent that access to or
21 easements over such property is required for the proper and com-
22 plete performance of this Decree, Defendants shall use their best
23 efforts to obtain access agreements from the present owners or
24 those persons who have control over the property, including
25 lessees, within sixty (60) days of the effective date of this
26 Consent Decree. Site access agreements shall provide access to
27 Defendants, the United States, EPA, the parties' contractors,
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1 State and local agencies, and their representatives. In the
2 event that site access agreements are not obtained within the
3 sixty (60) day period, the Defendants shall notify EPA within
4 sixty five (65) days of the effective date of this Consent Decree
5 regarding both the lack of, and efforts to obtain, such agree-
6 ments. If Defendants fail to gain access within 60 days, they
7 shall continue to use best efforts to obtain access until access
8 is granted. For purposes of this paragraph, "best efforts" in-
9 cludes but is not limited to, seeking judicial assistance, if
10 available and the payment of reasonable sums of money to third
11 party private parties, based on local fair market value for such
12 access or use, as consideration for access. EPA agrees to assist
13 the Defendants in obtaining such access, to the extent that EPA
14 determines that such assistance is appropriate. Any delay in
15 performing any requirement under this Decree arising from Defen-
16 dants' inability to obtain Site access, where Defendants have
17 made "best efforts" to obtain such access, constitutes a force
18 majeure pursuant to Section XXII (Force Majeure).

19 B. Any person acting on behalf of Defendants obtaining ac-
20 cess to the Site pursuant to this provision shall comply with all
21 applicable provisions of the Worker Health and Safety Plan as
22 submitted pursuant to Section IX (Worker Health and Safety Plan)
23 and Appendix B of this Consent Decree.

24 C. Notwithstanding any provision of this Consent Decree, the
25 United States retains all of its access authorities and rights
26 under CERCLA and any other federal statute or authority.
27
28

1 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

2 A. Defendants shall demonstrate their ability to complete
3 the Work and to pay all claims that arise from the performance of
4 the Work by obtaining, and presenting to EPA for approval within
5 30 calendar days after the effective date of this Decree, one of
6 the following mechanisms in the amount of the total estimated
7 costs of the Work remaining to be performed:

8 1) a performance bond;

9 2) a letter of credit;

10 3) a guarantee by a third party equaling the total es-
11 timated cost of the Work; or

12 4) a demonstration that at least one of the Defendants
13 satisfies the requirements of 40 C.F.R. Part 264.143(f).

14 B. At its discretion, EPA may evaluate the adequacy of the
15 assurance of ability to complete the Work, and if it is deter-
16 mined to be inadequate, EPA shall communicate that determination
17 to Defendants. If Defendants rely on internal financial informa-
18 tion for financial assurance, the Defendants shall annually sub-
19 mit sworn statements conveying the information required by 40
20 C.F.R. 264.143(f) on the anniversary date of the Consent Decree.
21 If, at any time, EPA determines that Defendants assets are insuf-
22 ficient to assure their ability to complete the Work, Defendants
23 shall obtain one of the three other financial instruments listed
24 above within thirty (30) calendar days of such EPA determination.
25 If Defendants invoke the dispute resolution provisions of this
26 Consent Decree to resolve any dispute over financial assurances,
27 the Defendants shall obtain one of the three financial instru-

1 ments listed above within seven (7) days, pending resolution of
2 the dispute. Defendants' inability to demonstrate financial
3 ability to complete the Work shall not excuse performance of any
4 activities required under this Consent Decree and shall not con-
5 stitute a breach or violation of or default under this Consent
6 Decree or result in stipulated penalties.

7
8 XV. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

9 A. All actions required to be taken pursuant to this Con-
10 sent Decree shall be undertaken in accordance with the require-
11 ments of all applicable federal, state and local laws, regula-
12 tions, and permitting requirements, in accordance with CERCLA, as
13 amended, the NCP, and Appendix A to this Consent Decree.

14 B. Defendants shall obtain all permits or approvals neces-
15 sary under federal, state or local laws and shall submit timely
16 applications and requests for any such permits and approvals.
17 Notwithstanding any other provision in this Consent Decree, no
18 federal, state or local permits shall be required for any Work
19 conducted pursuant to this Consent Decree entirely onsite.

20
21 XVI. DATA EXCHANGE: SAMPLING AND ANALYSIS

22 A. Under the provisions of Section 104(e) of CERCLA, 42
23 U.S.C. §9604(e), EPA explicitly reserves the right to observe the
24 Work of the Defendants as it is performed. In addition, at the
25 request of EPA, Defendants shall allow split or replicate samples
26 to be taken by EPA and/or its authorized representatives, of any
27 samples collected by the Defendants or anyone acting on the
28

1 Defendants' behalf pursuant to the implementation of this Consent
2 Decree. At least seven (7) days in advance of any sampling for
3 asbestos content, Defendants shall notify EPA of the intended
4 date of commencement of the sampling activity. In addition,
5 Defendants shall notify EPA at least 48 hours prior to any
6 modification or proposed changes to any such sample collection
7 activity. Defendants shall notify EPA thirty (30) days prior to
8 disposal of any such samples, and shall provide EPA with an op-
9 portunity to take possession of all or a portion of such samples.

10 B. Notwithstanding any provisions of this Consent Decree,
11 the United States hereby retains all of its information gathering
12 and inspection authorities and rights, including enforcement ac-
13 tions related thereto, under CERCLA, and any other applicable
14 statutes.

15 C. Within 60 days of the effective date of this Consent
16 Decree, Defendants shall propose to EPA a plan and system to
17 manage and organize data collected pursuant to this Decree. Upon
18 approval by EPA, Defendants shall implement the data management
19 plan and system.

20 21 XVII. RETENTION OF RECORDS

22 A. Defendants shall preserve and retain all records and
23 documents in their possession or control or in the possession or
24 control of their divisions, employees, agents, accountants, con-
25 tractors or attorneys which relate in any manner to the Site,

1 regardless of any document retention policy to the contrary, for
2 ten (10) years after the completion of the Work or termination of
3 this Consent Decree, whichever is later.

4 B. Until this 10 year period expires, the Defendants shall
5 preserve, and shall instruct all contractors, all contractor's
6 subcontractors, and anyone else acting on the Defendants' behalf
7 at the Site to preserve (in the form of originals or exact
8 copies, or in the alternative, microfiche of all originals) all
9 records, documents and information of whatever kind, nature, or
10 description relating to the Site. During the 10 year period fol-
11 lowing the completion of the Work, or earlier if requested by
12 EPA, originals or copies of all such records, documents, and in-
13 formation shall be delivered to the EPA Project Coordinator or
14 designee.

15 C. After this 10 year period, the Defendants shall notify
16 the EPA no later than sixty (60) days prior to the destruction of
17 such documents. Upon request by EPA, the Defendants proposing to
18 destroy records shall make available to the EPA originals or
19 copies of any such records prior to their destruction.

20 D. Defendants each individually certify that they have not
21 altered, mutilated, discarded, destroyed or otherwise disposed of
22 any records, documents or other information relating to their
23 potential liability with regard to the Site since notification of
24 potential liability by the United States.

25 E. Nothing contained in this Consent Decree shall be con-
26 strued to require the disclosure by Defendants to Plaintiff or
27 any other person of any information which is confidential under
28

1 the attorney-client privilege, the attorney work-product
2 privilege, or any other privilege recognized by law. EPA,
3 however, shall have the right to dispute claims of confiden-
4 tiality by Defendants.

5
6 XVIII. RESERVATION OF RIGHTS

7 A. Notwithstanding any other provision in this Decree, the
8 Covenant Not to Sue, as provided in Section XXVIII (Covenant Not
9 to Sue), shall not relieve any Defendant of its obligation to
10 meet and maintain compliance with the requirements set forth in
11 this Decree. Except as provided in Section XXVIII (Covenant Not
12 To Sue), the United States reserves all rights to take enforce-
13 ment actions for violations of this Decree, of CERCLA and/or any
14 other authority. including the right to seek response costs, in-
15 junctive relief, monetary penalties, and damages for any future
16 civil or criminal violation of law or this Consent Decree.

17 B. As stated in subparagraph A.16 of Section VII. (Work To
18 Be Performed) of this Decree, in the event EPA determines that
19 Defendants have failed to implement any provisions of this Decree
20 or the Work in an adequate or timely manner, or at any other
21 time, the United States may perform any and all portions of the
22 Work as EPA determines may be necessary. If the United States
23 performs all or portions of the Work because of the Defendants'
24 failure to comply with its obligations under this Consent Decree,
25 the Defendants shall reimburse the EPA for the costs of doing
26 such work, plus stipulated penalties, as set forth in Section XXI
27 (Stipulated Penalties). Notwithstanding any provision of this
28

1 Consent Decree, Defendants do not waive any rights which they may
2 have to object to any performance of any remedial work on the
3 Site in which funds of the Hazardous Waste Superfund or any suc-
4 cessor funds are used.

5 C. Except as provided in Section XXVIII (Covenant Not To
6 Sue), nothing in this Consent Decree shall be deemed to limit the
7 response authority of EPA under Section 104 of CERCLA, 42 U.S.C.
8 § 9604, and under Section 106 of CERCLA, 42 U.S.C. § 9606, or un-
9 der any other federal response authority. In any event, the
10 United States reserves the right to seek reimbursement from the
11 Defendants for any such response costs incurred by the United
12 States.

13 D. All parties to this Consent Decree expressly reserve all
14 rights and defenses that they may have, except as otherwise
15 provided in this Decree.

16 E. Nothing in this Consent Decree shall be interpreted as
17 waiving, abrogating or resolving any claims which any Defendant
18 has or may have based upon any alleged liability which the United
19 States Department of the Interior, any branch or division
20 thereof, or any successor agency has or may have for conditions
21 at the Site pursuant to CERCLA Sections 106, 107, 113, 120, or
22 310, 42 U.S.C. §§9606, 9607, 9613, 9620, or 9659 or pursuant to
23 Case NO. 91-1324 filed in the United States District Court for
24 the District of Columbia. In agreeing to this reservation the
25 United States does not admit liability for any such claims and
26 expressly reserves any and all defenses it may have to any such
27 claims.

1
2 XIX. REIMBURSEMENT OF FUTURE RESPONSE AND OVERSIGHT COSTS

3 A. Defendants shall reimburse the Hazardous Substance Su
4 perfund for the costs incurred (including indirect costs) by EPA,
5 not inconsistent with the NCP, for any activities outlined in
6 Section VII (Work to be Performed), Section VIII (Additional
7 Work) and Section X (Periodic Review to Assure Protection of
8 Human Health and the Environment) which are performed by EPA, and
9 for costs incurred by EPA to oversee and review the work of
10 Defendants, and any other costs incurred under or in connection
11 with this Consent Decree.

12 No more than annually, EPA shall submit to Defendants
13 documentation of such Future Response Costs, including oversight
14 costs, incurred by EPA in the time period since the last demand
15 for payment. EPA's Agency Financial Management System Summary
16 data ("SPUR reports") or an equivalent cost summary shall serve
17 as the documentation for payment demands. EPA will also provide
18 a summary of its indirect and interest cost calculations.

19 Defendants shall, within sixty (60) days of receipt of each
20 demand for payment, remit a check for the amount of those costs
21 made payable to the Hazardous Substance Superfund. If payment is
22 not made within 30 days, however, interest on the amount demanded
23 shall accrue at the rate established pursuant to Section 107(a)
24 of CERCLA.

25
26 The checks should reference the Mine Area Operable Unit of the
27 Atlas Asbestos Mine Site, and be addressed to:

1 U.S. Environmental Protection Agency
2 Region 9
3 Superfund Accounting
4 P.O. Box 360863M
5 Pittsburgh, PA 15251
6 Attention: Collection Officer for Superfund

7 A copy of the transmittal letter and a copy of the check shall be
8 sent simultaneously to the United States and the EPA Project
9 Coordinator as provided in Section XV (Form of Notice).

10 B. Defendants may contest payment of any Future Response
11 Costs under this Consent Decree if they determine that the United
12 States has made an accounting error or that a cost item that is
13 included represents costs that are inconsistent with the NCP, or
14 contains costs that were not actually incurred in connection with
15 the Site. Such objection shall be made in writing within 30 days
16 of receipt of EPA's demand for payment and must be sent to the
17 United States as specified in Section XV (Form of Notice). Any
18 such objection shall specifically identify the contested Future
19 Response Costs and the basis for objection.

20 In the event of such an objection, the Defendants shall,
21 within sixty (60) days of the date of EPA's demand, pay all un-
22 contested Future Response Costs to the United States in the man-
23 ner described in paragraph A, of this Section, above. Simul-
24 taneously, the Defendants shall establish an interest bearing
25 escrow account in a bank duly chartered in the State of Califor-
26 nia and remit to that escrow account funds equivalent to the
27 amount of the contested Future Response Costs. The Defendants
28 shall send to the United States, as provided in Section XV (Form
of Notice) a copy of the transmittal letter and check paying the
uncontested Future Response Costs, and a copy of the correspon-

1 dence that establishes and funds the escrow account, including,
2 but not limited to, information containing the identity of the
3 bank and bank ~~account~~ under which the escrow account is estab-
4 lished as well as a bank statement showing the initial balance of
5 the escrow account.

6 Simultaneously with establishment of the escrow account, the
7 Defendants shall initiate the Dispute Resolution procedures in
8 Section XXIII (Dispute Resolution). Upon Defendants' request,
9 EPA shall provide all cost documentation related to the dispute
10 which it would be required to produce under the Freedom of Infor-
11 mation Act, 5 U.S.C. §552, as amended. If the United States
12 prevails in the dispute, within twenty (20) days of the resolu-
13 tion of the dispute, the Defendants shall direct the escrow
14 holder to remit the escrowed monies (with accrued interest) to
15 the United States, in the manner described in paragraph A, of
16 this Section, above. If the Defendants prevail concerning any
17 aspect of the contested costs, the Defendants shall direct the
18 escrow holder to remit payment for that portion of the costs
19 (plus associated interest) for which they did not prevail to the
20 United States in the manner described in paragraph A, of this
21 Section, above, and Defendants shall be disbursed the balance of
22 the escrow account. The dispute resolution procedures set forth
23 in this paragraph in conjunction with the procedures set forth in
24 Section XXIII (Dispute Resolution) shall be the exclusive
25 mechanisms for resolving disputes regarding Defendants' obliga-
26 tion to reimburse the United States for its Future Response
27 Costs.

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1
2 XX. REIMBURSEMENT OF PAST COSTS

3 A. Defendants agree to reimburse the Hazardous Substance
4 Superfund in the amount of \$1,620,748.05 for the Past Response
5 Costs incurred by EPA up to and including November 30, 1990 with
6 respect to the Site.

7 B. Defendants shall reimburse EPA for such Past Costs ac-
8 cording to the following schedule: (i) at least \$200,000 shall be
9 paid within 90 days following entry of this Consent Decree; (ii)
10 at least an additional \$200,000 shall be paid within three months
11 after the first payment is due; (iii) at least an additional
12 \$400,000 shall be paid within six months after the first payment
13 is due; (iv) at least an additional \$400,000 shall be paid within
14 nine months after the first payment is due; and (v) at least an
15 additional \$420,748.05 shall be paid within twelve months after
16 the first payment is due; in addition, Defendants shall pay in-
17 terest on the amounts set out in subparagraphs (ii) through (v)
18 above at the time such payments are made, which interest shall
19 begin to accrue at the time that the payment in subparagraph (i)
20 is due. Such interest shall accrue at the rate established pur-
21 suant to Section 107(a) of CERCLA. Payments shall be made in the
22 manner and format specified in Section XIX.B above. Payment of
23 this amount completely resolves Defendants' liability to the
24 United States for Past Response Costs up to and including Novem-
25 ber 30, 1990, including all indirect costs and all interest that
26 has accrued or will accrue thereon.

XXI. STIPULATED PENALTIES

A. Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs B, C and D below, for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XXII (Force Majeure) or Section XIII (Dispute Resolution).

"Compliance" by Defendants shall include completion of the activities under this Consent Decree, or any Work Plan or other plan approved under this Consent Decree, in accordance with the requirements of and time schedules established by this Consent Decree, the SOW and any plans or other documents approved by EPA under this Consent Decree.

B. The following stipulated penalties shall be payable upon written demand by EPA per violation per day to the United States for any noncompliance violations not covered by Paragraph C below

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7th calendar day	\$1,000
8th through 14th calendar day	3,750
15th calendar day and beyond	6,250

C. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other documents required pursuant to this Consent Decree:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7th calendar day	\$ 750
8th through 14th calendar day	1,500
15th calendar day and beyond	2,000

D. In the event that EPA assumes performance of a portion or all of the Work pursuant to Sections XVIII (Reservation of Rights) and VII (Work To Be Performed), the Defendants will be liable for stipulated penalties in the amount of \$50,000, or the stipulated penalties, Defendants may owe pursuant to this Section, whichever is greater.

E. Except as stated otherwise in Paragraph F below, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

F. Following EPA's determination that Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Defendants written notification of the same and describe the noncompliance. EPA may also send the Defendants a written demand for payment of the penalties as provided herein. For untimely, as opposed to inadequate, submittals or performance, penalties shall accrue as provided in the preceding Paragraph

1 regardless of whether EPA has notified the Defendants of a viola-
2 tions. For inadequate, as opposed to untimely, submittals or for
3 inadequate, as opposed to untimely, performance of the require-
4 ments of this Consent Decree, EPA shall provide to Defendants, as
5 soon as possible, oral notification that Defendants' submittal or
6 performance is inadequate, with written confirmation within seven
7 (7) days that Defendants' submittal or performance is inadequate.
8 If EPA so notified Defendants in writing within seven (7) days
9 that Defendants' submittal or performance is inadequate,
10 penalties shall accrue commencing with Defendants' violation, as
11 described above. In the event that EPA fails to so notify Defen-
12 dants in writing within seven (7) days of inadequate submittals
13 or performance, stipulated penalties shall not accrue until
14 Defendants receive written notice from EPA. These notice provi-
15 sions will not apply to any violation of this Consent Decree
16 which causes a substantial harm to human health or the environ-
17 ment.

18 G. EPA may, in its discretion, waive stipulated penalties
19 for any noncompliance or determine that the amount of stipulated
20 penalties demanded is less than the maximum amount potentially
21 payable by Defendants. All penalties owed to the United States
22 under this section shall be due and payable within thirty (30)
23 days of the Defendants' receipt from EPA of a written demand for
24 payment of the penalties as provided in paragraph F above, unless
25 Defendants invoke the Dispute Resolution procedures under Section
26 XXIII (Dispute Resolution). All payments under this Section
27 shall be paid by certified check made payable to "EPA Hazardous
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1 Substances Superfund," and shall reference the Site and be ad-
2 dressed as indicated in Section XIX (Reimbursement of Response
3 and Oversight Costs). Copies of check(s) paid pursuant to this
4 Section, and any accompanying transmittal letter(s), shall be
5 sent to the United States as provided in Section XXIV (Form of
6 Notice).

7 H. Neither the invocation of dispute resolution procedures
8 under Section XXIII (Dispute Resolution), nor the payment of
9 penalties shall alter in any way Defendants' obligation to com-
10 plete the performance of the Work required under this Consent
11 Decree. Further, the Defendants waive any right that they might
12 have to challenge the amount of penalties per day of violation,
13 as stipulated in this Section. However, they may dispute, under
14 the procedures of Section XXIII (Dispute Resolution) EPA's deter-
15 mination that a violation of this Decree has occurred or the
16 duration of an alleged violation.

17 I. Penalties shall continue to accrue as provided in
18 Paragraph E of this Section during any dispute resolution period,
19 but need not be paid until the following:

20 1. If the dispute is resolved by agreement or by a
21 decision of EPA that is not appealed to this Court, accrued
22 penalties shall be paid to EPA within thirty (30) days of the
23 agreement or the receipt of EPA's decision or order;

1 2. If the dispute is appealed to this Court and the
2 United States prevails in whole or in part, Defendants shall pay
3 all accrued ~~penalties~~ owed to EPA within 60 days of receipt of
4 the Court's decision or order, except as provided in Subparagraph
5- 3 below;

6 3. If the District Court's decision is appealed by
7 Defendants, Defendants shall pay all accrued penalties into an
8 interest bearing escrow account within 60 days of receipt of the
9 Court's decision or order. Penalties shall be paid into this ac-
10 count as they continue to accrue, at least every 60 days. Within
11 thirty (30) days of receipt of the final appellate court deci-
12 sion, the escrow agent shall pay the balance of the account to
13 EPA or to Defendants to the extent that they prevail, as deter-
14 mined by the appellate court.

15 J. If Defendants fail to pay stipulated penalties when due,
16 the United States may institute proceedings to collect the
17 penalties, as well as late charges and interest. Defendants
18 shall pay interest on the unpaid balance, which shall begin to
19 accrue at the end of the thirty day period at the rate estab-
20 lished pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607.
21 Such failure to pay stipulated penalties when due shall also be a
22 violation of the Decree and shall result in the accrual of addi-
23 tional stipulated penalties as provided for in this Section.

24 K. Nothing in this Section shall be construed as prohibit-
25 ing, altering, or in any way limiting the ability of the United
26 States to seek any other remedies or sanction available by virtue
27 of Defendants violation of this Decree or of the statutes and
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1 regulations upon which it is based, including but not limited to,
2 penalties pursuant to Section 122(1) of CERCLA, provided,
3 however, that ~~if~~ the United States collects statutory penalties,
4 the total of all penalties which the United States can collect
5 from Defendants shall not exceed \$25,000 per day per violation.

6
7 XXII. FORCE MAJEURE

8 A. For purposes of this Consent Decree, force majeure is
9 defined as any event arising from causes beyond the control of
10 the Defendants, or their contractor, subcontractors, agents or
11 consultants which delays or prevents the performance of any
12 obligation under this Consent Decree notwithstanding Defendants
13 best efforts to avoid the delay. The requirement that Defendants
14 exercise "best efforts to avoid the delay" includes using best
15 efforts to anticipate any potential force majeure event and best
16 efforts to address the effects of any potential force majeure
17 event (1) as it is occurring and (2) following the potential
18 force majeure event, such that the delay is minimized to the
19 greatest extent practicable.

20 B. The Defendants shall have the burden of proving that the
21 delay was caused by circumstances beyond the control of the
22 Defendants. When circumstances are occurring or have occurred
23 that delay or may delay the completion of any phase of the
24 Remedial Action, whether or not due to a force majeure event, the
25 Defendants shall, no later than seventy-two (72) hours after
26 Defendants become aware or should have become aware of the force
27 majeure event, notify EPA's Project Coordinator orally and shall,
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1 within five (5) days of oral notification to EPA notify the EPA
2 project coordinator in writing of: the anticipated length and
3 cause of the delay; the reasons why the delay is beyond the con-
4 trol of Defendants; which of the tasks are directly affected by
5 the delay; the measures taken and/or to be taken to prevent or
6 minimize the delay; and the timetable by which the Defendants in-
7 tend to implement these measures and any aspects of the event
8 which may cause or contribute to an endangerment to public
9 health, welfare or the environment.

10 C. Economic hardship, normal inclement weather, increased
11 costs of performance and the failure of Defendants to make timely
12 application for any required permits or approvals and to provide
13 all information required therefor in a timely manner shall not be
14 considered events beyond the control of Defendants. their con-
15 tractors, subcontractors, agents or consultants and shall not
16 trigger the force majeure provision.

17 D. EPA shall determine whether the event constitutes force
18 majeure. If EPA determines that the event did not constitute
19 force majeure then any delay caused by the event claimed to be
20 force majeure by the Defendants shall constitute noncompliance
21 with the Consent Decree and penalties shall accrue from the time
22 of noncompliance, subject to the Dispute Resolution provisions
23 contained in Section XXIII (Dispute Resolution). If the EPA
24 determines the event does constitute force majeure, Defendants
25 shall propose an appropriate modification to the schedules for
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1 the work to be performed as provided in Section VII. EPA will
2 approve, disapprove or approve with modifications that proposed
3 schedule.

4 E. No deadline shall be extended beyond that period of time
5 which is necessary to complete the activities with the least
6 amount of delay possible and in no case beyond the actual delay
7 attributable to the force majeure event. Use of the force
8 majeure provision shall not relieve Defendants of their duty to
9 complete all other tasks in a timely manner in accordance with
10 the schedule set forth in this Consent Decree. The Defendants
11 shall adopt all measures to avoid or minimize delay.

12 F. Failure of the Defendants to comply with the require-
13 ments of this Section shall preclude Defendants from asserting
14 any claim of force majeure.

15 G. If the EPA and the Defendants cannot agree as to whether
16 the reason for the delay was a force majeure event, the deter-
17 mination of the EPA shall control, unless the Defendants invoke
18 the procedures outlined in Section XXIII (Dispute Resolution) of
19 this Consent Decree. In any such proceeding, to qualify for a
20 force majeure defense, Defendants shall have the burden of
21 demonstrating by a preponderance of the evidence that the delay
22 or anticipated delay has been or will be caused by a force
23 majeure event, that the duration of the delay was or will be war-
24 ranted under the circumstances, that best efforts were exercised
25 to avoid and mitigate the effects of the delay, and that Defen-
26 dants complied with the requirements of this Section.

XXIII. DISPUTE RESOLUTION

A. The procedure contained in this Section shall apply to all disputes arising under any provision of this Consent Decree. As required by Section 121(e)(2) of CERCLA, the Parties to this Consent Decree shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree or any Work required hereunder.

Any dispute which arises with respect to this Consent Decree, shall in the first instance be the subject of informal negotiations between EPA and Defendants, pursuant to Paragraph B of this Section. Prior to invoking formal Dispute Resolution procedures, any unresolved disputes arising between the EPA site representative and Defendants or their contractors shall be referred to the EPA and Defendants' Project Coordinators. In the event that the parties cannot resolve any dispute arising under this Consent Decree, then the interpretation advanced by EPA shall be considered binding unless Defendants invoke the dispute resolution provisions of this Section. Defendants' decision to invoke dispute resolution shall not constitute a force majeure under Section XXII (Force Majeure), herein. The amount of stipulated penalties as stated in Section XXI (Stipulated Penalties) (as opposed to EPA's determination that Defendants have violated the Decree) is not subject to dispute resolution. Use of the dispute resolution provision will not relieve Defendants' duty to complete the other tasks in a timely manner in accordance with the schedule set forth in this Consent Decree.

1 B. If Defendants object to any EPA decision, Defendants
2 shall notify EPA in writing of their objections within fourteen
3 (14) calendar days of receipt of the decision. EPA and Defen-
4 dants will then have an additional fourteen (14) calendar days
5 from receipt by EPA of the notification of objection to reach
6 agreement. At the end of the fourteen (14) day discussion
7 period, EPA shall provide Defendants a written statement of its
8 decision by the Hazardous Waste Management Division Director.

9 C. Petition Filed In Court:

10 1. In the event that the dispute cannot be resolved by
11 the informal negotiation procedures outlined in Paragraphs A and
12 B above, then the position advanced by EPA, referred to in
13 paragraph B above, shall be considered binding unless, within
14 thirty (30) days after Defendants' receipt of that written state-
15 ment, the Defendants file with the Court a petition which shall
16 describe the nature of the dispute and include a proposal for its
17 resolution. Defendants shall not file such a petition until in-
18 formal negotiations pursuant to Paragraph B, supra, are com-
19 pleted. The filing of a petition asking the Court to resolve a
20 dispute shall not of itself extend or postpone the Defendants'
21 obligations under this Decree with respect to the disputed issue,
22 or stay the provisions of Section XXI (Stipulated Penalties).

23 2. Unless the Court establishes a different period for
24 response, Plaintiff shall have thirty (30) days to respond to the
25 petition. In proceedings on any dispute covered by Section
26 113(j)(2) of CERCLA, 42 U.S.C. §9613(j)(2), the Court shall
27 uphold EPA's decision unless the Defendants can demonstrate, on
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1 the administrative record, that EPA's decision was arbitrary and
2 capricious or otherwise not in accordance with law. For any
3 other matters, the Court shall apply applicable standards of law
4 regarding the standard of review and the scope of materials to be
5 considered. In any proceedings on a dispute, Defendants shall
6 bear the burden of coming forward with evidence and of persuasion
7 on factual issues.

8 3. If the Court finds that the Defendants have not
9 satisfied their burden, the Defendants shall transmit payment of
10 all penalties which have accrued during the dispute, plus inter-
11 est at the rate specified in Section XXI (Stipulated Penalties)
12 to the Hazardous Substance Superfund, within thirty (30) working
13 days of resolution of the dispute. The Defendants shall then
14 implement the disputed matter as resolved and perform the work
15 which was the subject of the dispute, if required. The ap-
16 propriate plans should be amended to reflect the resolution of
17 the dispute.

18 4. In any dispute in which Defendants prevail the dead-
19 lines for any affected deliverables shall be extended to account
20 for any delays attributable to the dispute resolution procedures.
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1 XXIV. FORM OF NOTICE

2 A. When notification to or communication with the
3 United States, EPA, the Defendants, or the State is required by
4 the terms of this Consent Decree, it shall be in writing, postage
5 prepaid, and addressed as follows:

6
7 As to Plaintiff:

8 Chief
9 Environmental Enforcement Section
10 Environment and Natural Resources Division
11 Department of Justice
12 10th and Pennsylvania Avenue, N.W.
13 Washington, DC 20530

14 EPA Project Coordinator (H-6-2)
15 Superfund Northern California Section
16 U.S. Environmental Protection Agency
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 Assistant Regional Counsel for the
20 Atlas Asbestos Mine Site
21 Office of Regional Counsel
22 U.S. Environmental Protection Agency
23 75 Hawthorne Street
24 San Francisco, CA 94105

25 Frank Lopez
26 California Department of Health Services
27 10151 Croydon Way
28 Sacramento, California 96827

21 As to the Defendants:

22 For Defendant, Vinnell Mining & Minerals Corporation:

23 Richard H. Mays, Esq.
24 Marks, Murase & White
25 2001 "L" Street, N.W., Suite 750
26 Washington, D.C. 20036

27 James C. Fontana, Esq.
28 General Counsel
Vinnell Mining & Minerals Corporation
10530 Rosehaven Street, Suite 600
Fairfax, Virginia 22030

1 For Defendant, Atlas Corporation:

2 Robert A. Bourque, Esq.
3 Simpson Thacher & Bartlett
4 425 Lexington Avenue
New York, New York 10017

Richard Blubaugh
Vice President
Regulatory and
Environmental Affairs
Atlas Corporation
370 17th Street
Denver, Colorado 80202

5
6 Barry W. Lee, Esq.
7 Dinkelspiel, Donovan & Reder
8 One Embarcadero Center - 27th Floor
San Francisco, CA 94111

9 XXV. MODIFICATION

10 No modification shall be made to this Consent Decree without
11 written notification to and written approval of the parties to
12 this Consent Decree and the Court; provided, however, that
13 modifications that do not materially alter the requirements of
14 this Consent Decree and any modifications of the Work Plan may be
15 made upon the written consent of the Parties and shall be filed
16 with this Court. The notification required by this Paragraph
17 shall set forth the nature of and reasons for the requested
18 modification. No oral modification of this Consent Decree shall
19 be effective. Nothing in this Paragraph shall be deemed to alter
20 the Court's power to supervise or modify this Consent Decree or
21 to limit EPA's authority to modify the ROD in accordance with
22 CERCLA and the NCP, however, Defendants will not be required un-
23 der this Decree to perform any additional work which results from
24 any modification of the ROD signed by the EPA Region 9 Regional
25 Administrator on February 14, 1991.
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1 XXVI. ADMISSIBILITY OF DATA

2 For the purpose of this action only, the Parties waive any
3 evidentiary ~~objection~~ as to the authenticity of data gathered,
4 generated, or evaluated by any Party in the performance or over-
5 sight of the Work under this Decree that has been verified using
6 the Construction Quality Control procedures specified in Section
7 XI (Construction Quality Control). The parties shall be able to
8 impeach or otherwise contest the credibility, validity or meaning
9 of such evidence.
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12 XXVII. CONTRIBUTION PROTECTION

13 Nothing in this Consent Decree shall be construed to create
14 any rights in, or grant any cause of action to, any person not a
15 party to this Consent Decree. The preceding sentence shall not
16 be construed to waive or nullify any rights that any person not a
17 signatory to this Decree may have under applicable law. Each of
18 the Parties expressly reserves any and all rights (including, but
19 not limited to, any right to contribution), defenses, claims,
20 demands, and causes of action which each party may have with
21 respect to any matter, transaction, or occurrence relating in any
22 way to the Site against any person not a party hereto.

23 With regard to claims for contribution against Defendants
24 for matters addressed in this Consent Decree, the Parties hereto
25 agree that the Defendants are entitled to such protection from
26 contribution actions or claims as provided in Section 113(f)(2)
27 of CERCLA, 42 U.S.C. §9613(f)(2).
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1 The Defendants agree that with respect to any suit or claim
2 for contribution brought by them for matters related to this Con-
3 sent Decree they will notify the United States in writing no
4 later than the date that such suit or claim is served. The
5 Defendants also agree that with respect to any suit or claim for
6 contribution brought against them for matters related to this
7 Consent Decree they will notify the United States in writing
8 within twenty (20) days of the date on which the complaint in
9 such an action is served on them.

10
11 XXVIII. COVENANT NOT TO SUE

12 A. Subject to the provisions of Section XVIII (Reservation
13 of Rights) and this Section, the United States covenants not to
14 sue, not to take any administrative action, and not to execute
15 judgment against the Defendants for any and all civil liability
16 to the United States for causes of action arising under Sections
17 104, 106, and 107(a) of CERCLA, 42 U.S.C. §§9604, 9606, 9607(a)
18 and Section 7003 of the Resource Conservation and Recovery Act,
19 42 U.S.C. §6973, relating to the Site, or for matters covered by
20 this Consent Decree. This Covenant Not To Sue shall be effective
21 so long as Defendants continue to perform, completely and satis-
22 factorily, their obligations under this Consent Decree or have
23 otherwise invoked the provisions of Section XXIII (Dispute
24 Resolution). With respect to Future Liability, this Covenant Not
25 To Sue shall take effect only when all of the following have oc-
26 curred: (1) EPA issues a Certificate of Completion of the
27 Remedial Action pursuant to Section XXXIX (Certificate of

1 Completion), and (2) the receipt by EPA of the payments required
2 by Sections XIX (Reimbursement of Future Response and Oversight
3 Costs) and XX (Reimbursement of Past Costs). With respect to Fu-
4 ture Liability, this Covenant Not To Sue is conditioned upon com-
5 plete and satisfactory performance by Defendants of their obliga-
6 tions under this Consent Decree. This Covenant Not To Sue ex-
7 tends only to Defendants and their successors and assigns and
8 does not extend to any other person. It is expressly provided,
9 however, that nothing in this Consent Decree shall be interpreted
10 as waiving, abrogating or resolving any claim which the United
11 States Department of the Interior, including any branch or divi-
12 sion thereof, or any successor agency, has or may have against
13 any Defendant, including any of said Defendants' successors and
14 assigns, based upon any liability which any of said Defendants
15 has or may have for conditions at the Site pursuant to CERCLA,
16 including sections 106, 107, 113, 120 or 310, 42 U.S.C. §§9606,
17 9607, 9613, 9620, or 9659. In agreeing to this reservation the
18 Defendants do not admit liability for such claims and expressly
19 reserve any and all defenses they may have to such claims.

20 B. Defendants release and covenant not to sue the United
21 States, including any and all departments, agencies, officers,
22 administrators, and representatives thereof, for any claim,
23 counter-claim, or cross-claim asserted, or that could have been
24 asserted, prior to the effective date of this Consent Decree or
25 arising out of or relating to the Site, including any direct or
26 indirect claim for reimbursement from the Hazardous Substance Su-
27 perfund established (established pursuant to the Internal Revenue
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1 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111 or
2 112 or otherwise, or to seek any other costs, damages or attor-
3 neys' fees from the United States; provided, however, that noth-
4 ing in this Consent Decree shall be interpreted as waiving,
5 abrogating or resolving any claims which any Defendant has or may
6 have based upon any alleged liability which the United States
7 Department of the Interior, any branch or division thereof, or
8 any successor agency has or may have for conditions at the Site
9 pursuant to CERCLA Sections 106, 107, 113, 120, or 310, 42 U.S.C.
10 §§9606, 9607, 9613, 9620, or 9659 or pursuant to Case No. 91-1324
11 filed in the United States District Court for the District of
12 Columbia. In agreeing to this reservation the United States does
13 not admit liability for any such claims and expressly reserves
14 any and all defenses it may have to such claims. Nothing in this
15 Consent Decree shall be deemed to constitute preauthorization of
16 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §
17 9611 or 40 C.F.R. § 300.25(d).

18 C. Notwithstanding any other provision of this Consent
19 Decree, the United States reserves the right to institute
20 proceedings in this action or in a new action or to issue an Or-
21 der seeking to compel the Defendants to perform any additional
22 response work at or emanating from the Site, or to reimburse the
23 United States for Response Costs if:

24 (1) Prior to U.S. EPA certification of completion of
25 the remedial action,

1 a. conditions at the Site, previously unknown to
2 the United States, are discovered by EPA after the entry of this
3 Consent Decree, or

4 b. information is received, in whole or in part,
5 after the entry of this Consent Decree,

6 and these previously unknown conditions or information in-
7 dicates that the selected remedy will not adequately protect
8 human health or the environment;

9 (2) Subsequent to U.S. EPA certification of completion
10 of the Remedial Action,

11 a. conditions at the Site, previously unknown to
12 the United States, are discovered by EPA after the certification
13 of completion by EPA, or

14 b. information is received, in whole or in part,
15 after the certification of completion by EPA,

16 and these previously unknown conditions or information in-
17 dicates that the selected remedy as implemented is not protective
18 of human health or the environment.

19 D. Notwithstanding any other provision in this Consent
20 Decree, this covenant not to sue shall not relieve the Defendants
21 of their obligations to meet and maintain compliance with the re-
22 quirements set forth in this Consent Decree, specifically includ-
23 ing the conditions set forth in the ROD, which is incorporated
24 herein. The United States reserves all its rights to take
25 response actions at the Site, including the right to take
26 response action in the event of a breach of the terms of this
27 Consent Decree and to seek recovery of costs which: 1) result
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1 from such a breach; 2) relate to any portion of the work funded
2 or performed by the United States; or (3) are enforcement costs
3 incurred by the United States associated with the Site.

4 E. Defendants are expressly not released from, and the
5 provisions of Paragraph A of this Section shall not apply to, any
6 matter not expressly addressed by this Consent Decree, including
7 the following claims:

8 1. Claims based on a failure by Defendants to meet the
9 obligations of this Decree;

10 2. Any other claims of EPA for any other costs or ac-
11 tions at the Site which are not expressly and exclusively under-
12 taken pursuant to the terms of this Consent Decree;

13 3. Claims based on the Defendants' liability arising
14 from the past, present, or future disposal of Waste Materials
15 outside of the Site and not attributable to the Site;

16 4. Reserved;

17 5. Claims based on criminal liability;

18 6. Claims based on liability for damage to natural
19 resources as defined in CERCLA;

20 7. Claims based on liability for Waste Materials
21 removed from the Site;

22 8. Claims based on liability for future response or
23 oversight expenses incurred by the United States except as those
24 expenses are recovered by the United States pursuant to Section--
25 XIX, herein ("Reimbursement of Future Response and Oversight
26 Costs"); or
27
28

1 9. Liability for any violations of Federal or State
2 law which occur during or after implementation of the Work.

3 F. Nothing in this Consent Decree shall constitute or be
4 construed as a release or covenant not to sue regarding any claim
5 or cause of action against any person (as defined in Section
6 101(21) of CERCLA) or other entity not a signatory to this Con-
7 sent Decree for any liability it may have arising out of or
8 relating to the Site.

9
10 XXIX WAIVER OF DEFENSE

11 All Parties recognize and acknowledge that the settlement
12 embodied in this Consent Decree is only a partial resolution of
13 issues related to the remediation of conditions at the Atlas Mine
14 Site. Defendants hereby waive the defenses of res judicata, col-
15 lateral estoppel, and claim-splitting by the Plaintiff, only with
16 respect to the Plaintiff's right to pursue subsequent litigation
17 regarding Defendants' responsibility for any work and costs not
18 covered by this Consent Decree, if any.

19
20 XXX. COMMUNITY RELATIONS

21 As requested by EPA, Defendants shall cooperate with EPA
22 in providing information to the public and shall participate in
23 the preparation of appropriate information disseminated to the
24 public and in public meetings which may be held or sponsored by
25 EPA to explain activities at or concerning the Site.

1 XXXI. LODGING AND PUBLIC PARTICIPATION

2 A. Pursuant to Section 122(d) of CERCLA, 42 U.S.C. §
3 9622(d), this Consent Decree will be lodged with the Court for
4 thirty (30) days, and the United States shall publish a notice of
5 availability of review to allow public comment prior to entry by
6 the Court. The United States will file with the Court a copy of
7 any comments received and the responses of the United States to
8 such comments.

9 B. Plaintiff will provide persons who are not parties to
10 the proposed settlement with the opportunity to file written com-
11 ments during at least a thirty (30) day period following such
12 notice. Plaintiff will file with the Court a copy of any com-
13 ments received and its responses to such comments.

14 C. After the closing of the public comment period, Plain-
15 tiff will review all comments and determine whether the comments
16 disclose facts or considerations which indicate that the proposed
17 judgment is inappropriate, improper or inadequate, and therefore
18 that the Consent Decree should be modified. If a modification is
19 deemed necessary by Plaintiff based on public comment, Plaintiff
20 will notify Defendants. Defendants consent to the entry of this
21 Consent Decree, in the form and content as executed by Defen-
22 dants, without further notice.

23
24 XXXII. CONSISTENCY WITH THE NCP

25 The United States and the Defendants agree that the Operable
26 Unit Remedial Action and Work, if performed in full accordance
27 with the requirements of this Consent Decree, is consistent with
28

1 the provisions of the National Oil and Hazardous Substances Pol-
2 lution Contingency Plan 40 C.F.R. Part 300, pursuant to Section
3 105 of CERCLA 42 U.S.C. § 9605.

4
5 XXXIII. INDEMNIFICATION AND INSURANCE

6 A. Notwithstanding any approvals which may be granted by
7 the United States or other government entities, Defendants shall
8 indemnify the United States and save and hold the United States
9 Government, its officials, agents, contractors, representatives,
10 agencies or departments harmless for any and all claims or causes
11 of action of third parties arising from any acts or omissions of
12 the Defendants, its officers, employees, agents, receivers,
13 trustees, successors, assigns, contractors, subcontractors, or
14 any other person acting on its behalf or under its control in
15 carrying out activities pursuant to this Consent Decree. This
16 indemnification does not extend to any loss, injuries or damages
17 suffered or incurred by any person to the extent that such loss,
18 injuries or damages are proximately caused by the actions or con-
19 duct of the United States, its agencies, departments, employees,
20 agents, contractors or subcontractors. The United States is not,
21 and shall not be held out as, a party to any contract entered
22 into by or on behalf of Defendants in carrying out activities
23 pursuant to this Consent Decree. Neither Defendants nor any such
24 contractor shall be considered an agent of the United States.

25 B. Defendants shall indemnify and hold harmless the United
26 States with respect to any claims for damages or reimbursement
27 asserted against the United States, or for any set-off of any
28

1 payments made or to be made to the United States, arising from or
2 on account of any contract, agreement or arrangement between
3 Defendants and any person for performance of the Work on or
4 relating to the Site, including claims on account of construction
5 delays.

6 C. Before starting any of the onsite Work required by this
7 Consent Decree, Defendants shall secure, and shall maintain until
8 the first anniversary of EPA's Certification of Completion the
9 Remedial Action pursuant to Section XXXIX (Certificate of Comple-
10 tion) comprehensive general liability and automobile insurance
11 with limits of one million dollars (\$1,000,000) per occurrence,
12 combined single limit, naming as insured the United States. In
13 addition, for the duration of this Consent Decree, Defendants
14 shall satisfy, or shall ensure that their contractors or sub-
15 contractors satisfy, all applicable laws and regulations regard-
16 ing the provision of workmen's compensation insurance for all
17 persons performing work on behalf of Defendants in furtherance of
18 this Consent Decree. Prior to commencement of work under this
19 Consent Decree, and annually thereafter, Defendants shall provide
20 to EPA certificates of such insurance. If Defendants demonstrate
21 by evidence satisfactory to EPA that any contractor or sub-
22 contractor maintains insurance equivalent to that described
23 above, or insurance covering the same risks but in a lesser
24 amount, then with respect to that contractor or subcontractor
25 Defendants need prove only that portion of the insurance
26 described above which is not maintained by the contractor or sub-
27 contractor.

28

1
2 XXXIV. OTHER CLAIMS

3 Nothing in this Consent Decree shall be deemed to constitute
4 a preauthorization of a CERCLA claim within the meaning of Sec-
5 tions 111 or 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or 40 C.F.R.
6 § 300.25(d). In consideration of the entry of this Consent
7 Decree, Defendants agree not to make any claims pursuant to Sec-
8 tion 112 or Section 106(b)(2), 42 U.S.C. §§ 9612, 9606(b)(2), or
9 any other provision of law directly or indirectly against the
10 Hazardous Substance Superfund, or make other claims against the
11 United States for those costs expended in connection with this
12 Consent Decree, except insofar as Defendants have reserved such
13 rights pursuant to Paragraph B of Section XXVIII (Covenant Not To
14 Sue).
15

16 XXXV. CONTINUING JURISDICTION

17 The Court specifically retains jurisdiction over both the
18 subject matter of and the Parties to this action for the duration
19 of this Consent Decree for the purposes of issuing such further
20 orders or directions as may be necessary or appropriate to con-
21 strue, implement, modify, enforce or terminate or reinstate the
22 terms of this Consent Decree or for any further relief as the in-
23 terest of justice may require. Nothing contained herein shall
24 affect the jurisdiction of the United States District Court for
25 the District of Columbia in the case of Vinnell Mining & Minerals
26 Corporation v. Bureau of Land Management, Department of Interior,
27 United States of America, Docket No. 91-1324.
28

1
2 XXXVI. REPRESENTATIVE AUTHORITY

3 A. Each undersigned representative of the Defendants to
4 this Consent Decree certifies that he or she is fully authorized
5 by the Party to enter into and execute the terms and conditions
6 of this Consent Decree, and to legally bind such Party to this
7 Consent Decree.

8 B. Defendants shall identify, on the attached signature
9 page, the name and address of an agent who is authorized to ac-
10 cept service of process by mail on behalf of that Defendant with
11 respect to all matters arising under or relating to this Consent
12 Decree. Defendants hereby agree to accept service in that manner
13 and to waive the formal service requirements set forth in Rule 4
14 of the Federal Rules of Civil Procedure, including service of a
15 summons, and any applicable local rules of this Court.
16

17 XXXVII. EFFECTIVE DATE

18 This Consent Decree is effective upon the date of its entry
19 by the Court.
20

21 XXXVIII. SEVERABILITY

22 If any provision or authority of this Consent Decree or the
23 application of this Consent Decree to any circumstance is held by
24 the Court to be invalid, the application of such provision to
25 other circumstances and the remainder of the Consent Decree shall
26 remain in force and shall not be affected thereby.
27
28

1
2 XXXIX. CERTIFICATION OF COMPLETION

3 A. Within ninety (90) days after Defendants conclude that
4 the Remedial Action has been fully performed, Defendants shall so
5 notify EPA and shall schedule and conduct a pre-certification in-
6 spection to be attended by Defendants and EPA. Such inspection
7 shall be followed by a written report submitted within 30 days of
8 the inspection by a registered professional engineer and the
9 Defendants' Project Coordinator certifying that the Remedial Ac-
10 tion has been completed in full satisfaction of the requirements
11 of this Consent Decree. If EPA determines that the Remedial Ac-
12 tion or any portion thereof has not been completed in accordance
13 with this Consent Decree, EPA will notify Defendants in writing
14 of the activities that must be performed to complete the Remedial
15 Action and may set forth in the notice a schedule for performance
16 of such activities. Subject to the provisions of Section XXIII
17 (Dispute Resolution), Defendants shall perform all activities
18 described in the notice in accordance with the specifications and
19 schedules established therein.

20 B. If EPA concludes, following the initial or any subse-
21 quent notification of completion by Defendants that the Remedial
22 Action has been fully performed in accordance with this Consent
23 Decree, EPA shall so certify in writing to Defendants. This cer-
24 tification shall constitute the "certification of completion of
25 remedial action" pursuant to Section 122(f)(3) of CERCLA and for
26 purposes of this Consent Decree.

1 C. The issuance of such certification of completion shall
2 not alter other terms or Defendants' obligations as set forth in
3 the provisions of Section XVII (Retention of Records), Section
4 XVIII (Reservation of Rights), Section XXVIII (Covenant Not to
5 Sue), Section X (Periodic Review to Assure Protection of Human
6 Health and the Environment), Section XIX (Reimbursement of
7 Response and Oversight Costs) and such other continuing rights
8 and obligations of Defendants under this Consent Decree.
9

10 XL. TERMINATION AND SATISFACTION

11 This Consent Decree shall terminate upon certification by
12 EPA of completion of the Work To Be Performed and that Defendants
13 have satisfied their obligations under Section XIX (Reimburse-
14 ment of Response and Oversight Costs), Section XX (Reimbursement
15 of Past Costs), Section XXI (Stipulated Penalties) and Section
16 VIII (Additional Work). Termination of Defendants' obligations
17 under the above stated provisions of this Consent Decree shall
18 not alter the provisions of Section XVII (Retention of Records),
19 Section XVIII (Reservation of Rights), Section XXVII
20 (Contribution Protection), Section XXVIII (Covenant Not to Sue),
21 Section X (Periodic Review to Assure Protection of Human Health
22 and the Environment), Section XIX (Reimbursement of Response and
23 Oversight Costs) and such other continuing rights and obligations
24 of Defendants under this Consent Decree.
25
26
27
28

XLI. SECTION HEADINGS

The section headings set forth in this Consent Decree and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

XLII. COUNTERPARTS

This Consent Decree may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

SIGNED and ENTERED this 12th day of August, 1992.


UNITED STATES DISTRICT JUDGE

SIGNATURE PAGE FOR CONSENT DECREE BETWEEN THE UNITED STATES, AS
PLAINTIFF, AND ATLAS CORPORATION AND VINNELL MINING AND MINERAL
CORPORATION, AS DEFENDANTS:

FOR DEFENDANT ATLAS CORPORATION

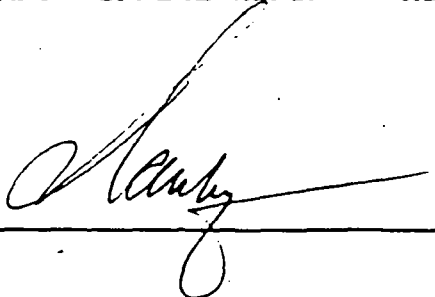


Richard R. Weaver
President and CEO

DATE: January 23, 1992

1 SIGNATURE PAGE FOR CONSENT DECREE BETWEEN THE UNITED STATES, AS
2 PLAINTIFF, AND ATLAS CORPORATION AND VINNELL MINING AND MINERAL
CORPORATION, AS DEFENDANTS:

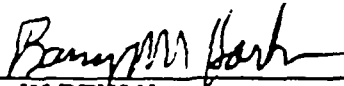
3
4
5 FOR DEFENDANT VINNELL MINING & MINERALS CORPORATION:

6
7
8 
9

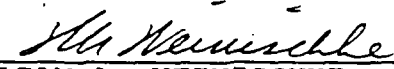
DATE: 17 Jan 1992

1 SIGNATURE PAGE FOR CONSENT DECREE BETWEEN THE UNITED STATES, AS
2 PLAINTIFF, AND ATLAS CORPORATION AND VINNELL MINING AND MINERAL
CORPORATION, AS DEFENDANTS:

3
4 FOR PLAINTIFF, UNITED STATES:

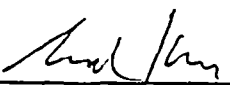
5-
6 
7 BARRY HARTMAN
8 Acting Assistant Attorney General
9 Environment and Natural Resources
U.S. Department of Justice

DATE: 5/28/92


10
11 
12 WILLIAM A. WEINISCHKE
13 Attorney, Environmental Enforcement Section
14 U.S. Department of Justice

DATE: 5/28/92

15
16 GEORGE L. O'CONNELL
17 United States Attorney

18
19 BY: 
20 Assistant United States Attorney

DATE: 5-28-92

21
22
23
24 
25 DANIEL W. MCGOVERN
26 Regional Administrator
27 U.S. Environmental Protection Agency
28 Region IX

DATE: 2.26.92

LIST OF APPENDICES

- Appendix A The Record Of Decision ("ROD") for the Mine Area
Operable Unit Remedial Action dated
February 14, 1991.
- Appendix B Scope of Work ("SOW")

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

That on May 28, 1992 she served a copy of

CONSENT DECREE

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California.

Addressee(s):

Richard H. Hays
Marks, Murase & White
2000 "L" Street, N.W.
Washington D.C. 20036

Robert A. Bourque
Simpson, Thadine & Bartlett
425 Lexington Avenue
New York, NY 10017

Barry W. Lee
Dinkelspiel, Donovan & Reder
One Embarcadero Center
San Francisco, CA 94111


PATRICIA PONTELLO

United States District Court
for the
Eastern District of California
August 18, 1992

* * CERTIFICATE OF SERVICE * *
Entry on Civil Docket

1:92-cv-05373

USA

v.

Atlas Corp

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 18, 1992, I SERVED and ENTERED on the civil docket a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy(ies) into an inter-office delivery receptacle located in the office of the Clerk.

Barry M Hartman
United States Department of Justice
P O Box 23986
Environment and Natural Resources Division
Washington, DC 20026-3986

William A Weinischke
United States Department of Justice
Environmental Enforcement Section
PO Box 7611
Ben Franklin Station
Washington, DC 20044

Edward L Knapp
United States Attorney
Assistant United States Attorney
650 Capitol Mall
Room 3305
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY: 